

November 21, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L04P0008**
Proposed Ordinance No. **2006-0438**

BECKWITH SUBDIVISION
Preliminary Plat Application

Location: 3305 South 374th Street, directly south of the South 374th Street and
33rd Avenue South intersection west of Military Road

Applicant: Chad Beckwith
represented by **Evan Mann**
Apex Engineering, Inc.
2601 South 35th Street, Suite 200
Tacoma, Washington 98409-7479
Telephone: (253) 473-4494

King County: Department of Development and Environmental Services, (DDES)
represented by **Trishah Bull**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6758
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:

Department's Final Recommendation:

Examiner's Decision:

Approve with conditions

Approve with revised conditions

Approve with revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:

October 10, 2006

Hearing Closed:

October 10, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer: Chad Beckwith
1201 Browns Point Boulevard NE
Tacoma, WA 98422
206-510-2799

Engineer: Apex Engineering
2601 S 35th, Suite 200
Tacoma, WA 98409
253-473-4494

STR: NW-34-21-4

Location: The site is located at 3305 S 374th Street, directly south of the S 374th Street and 3rd Avenue S intersection.

Zoning: R-6
Acreage: 2.43
Number of Lots: 12
Density: 4.94 units per acre
Lot Size: Approximately 5,000 square feet
Proposed Use: Single-family detached dwellings
Sewage Disposal: Lakehaven Utility District
Water Supply: Lakehaven Utility District
Fire District: King County District No. 39
School District: Fife School District No. 888
Application Completeness Date: June 9, 2004

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. The subject property is a 2.43-acre, near rectangular parcel on the south side of South 374th Street. Its general location is west of Military Road in the unincorporated Jovita area north of the Pierce County line, east of Federal Way and north of Milton and Edgewood. The site topography consists of gently rolling terrain characterized by a low descending ridge that traverses the site on an axis running from a high point in the northeast corner to the south property line close to the southwest corner. The bulk of the site therefore descends generally to the south and then southeast; the northwest quarter or so descends generally west to a drainage course running south just offsite and along the west property boundary. The site is located in the East Branch Hylebos Creek drainage sub-basin. The drainage course running along the west boundary is a Class 3

stream; the other sensitive area on the property is a 981 square foot Class 3 wetland, which is not a regulated wetland due to its small size. The property is sparsely wooded, somewhat more densely in the eastern and southern portions, with a mix of deciduous and coniferous trees, along with typical Northwest shrubbery and groundcover. A single-family residence and outbuildings are located in the southwest portion (and are planned to be removed upon development). The surrounding general area is an urbanizing part of the county with a significant amount of fairly standard-density suburban development.

4. Applicant Chad Beckwith proposes subdivision of the property into 12 lots for detached single-family residences. The residential density would be approximately 4.94 units per acre, with lot sizes approximately 5,000 square feet in area. Internal access to the lots would be provided by the extension of a public road cul-de-sac from South 374th Street opposite its existing intersection with 33rd Avenue South. The cul-de-sac would extend due south into the site and then curve east to terminate in an offset bulb in the southeastern portion of the tract. Extending from the cul-de-sac would be two private access tracts providing access to interior lots. The onsite environs of the Class 3 stream along the western boundary would be protected by the establishment of a sensitive areas tract (Tract E) and would have an additional 15-foot wide building setback within the adjacent lots (Lots 11 and 12). An open space/recreation area tract (Tract C), approximately 5,000 square feet in area, would be located on the west side of the plat entry cul-de-sac, while a drainage facility tract (Tract B) would be located in the southeastern corner.
5. Traffic impacts of the proposed development will be adequately mitigated under applicable code requirements. The development has been granted a Certificate of Concurrency under Chapter 14.70 KCC. It is subject to the standard collection of MPS mitigation fee payments under Chapter 14.75 KCC. Given the low level of traffic generated by the proposed 12-lot subdivision and the absence of any high accident locations affected by the development's traffic, no offsite improvements are required due to level of service deficiency or high accident location impacts under Chapter 14.80 KCC. To provide adequate access to the development in conformity with the King County Road Standards (KCRS), the developer will construct offsite road improvements of South 374th Street to Military Road, consisting of a half-street improvement within the existing 30 foot wide right-of-way (providing curb, gutter and five-foot-wide sidewalk improvements along the south side of the offsite portion and sufficient paved road width to provide a 20-foot wide traveled way for vehicles). (Completion of the other half of the offsite road segment to Military Road will be performed by other development fronting the north side of the South 374th Street right-of-way, or by other forces.) The subdivision will also provide full frontage improvements along its frontage on the south side of South 374th Street.
6. The stormwater drainage and detention plan for the proposed development addresses the existence of two drainage sub-basins on the site. The sub-basin divide is formed by the aforementioned low ridge that traverses the site. Little upstream flow enters the site. The northwest portion of the site sheetflows toward the west property line to the aforementioned stream. The majority southeastern portion sheetflows to the southeast corner. Downstream, the drainage paths converge in a wetland tract in the preliminarily approved *Crystal Haven* subdivision to the south, from where outflow continues to Hylebos Creek. DDES Drainage Adjustment L06V0003 has been granted to allow consolidation of most of the onsite drainage sub-basins for development drainage direction purposes, and conveyance of most of the post-developed flow to the open pond drainage detention/water quality facilities in the southeast corner. A portion of the South 374th Street road drainage, which will be collected in the proposed offsite road improvements out to Military Road, will also be routed to the onsite facilities, which will be sized to receive and detain such additional runoff in conformity with the

applicable county standards (which will be the Level 2 flow control and Basic water quality requirements of the 1998 King County Stormwater Design Manual). The metered detention release would enter the existing downstream drainage path from the southeast corner of the site.

7. All resident public schoolchildren will be bused to their respective schools in the Fife School District from a bus stop at the intersection of South 374th Street and Military Road. The required and proposed internal sidewalk, direct frontage improvements on South 374th Street, and the construction of the offsite half street improvements including a sidewalk on the south side of the offsite portion of South 374th Street to Military Road will provide safe walking conditions for those school pedestrians.
8. Nearby residents of property on Military Road slightly to the north of South 374th Street expressed concern about the density of the proposal, which the correspondents claim is inappropriately smaller than the size of existing lots in the area. Similar concern is expressed about the narrowness of proposed road widths. The resultant scale of development is felt to adversely affect a “good quality of life.” The correspondents desire that South 374th Street be improved with paving (which will be accomplished as a part of this development proposal). The Examiner finds that the proposed lot sizes and road widths conform to the R-6 zoning applied to the subject property and established KCRS specifications, respectively. The Examiner does not have authority to impose more than the minimum standards established by the land use and road regulations of the county.¹

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted in the R-6 zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on November 21, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

¹ One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual applications must be based upon adopted ordinances and policies rather than upon the personal preferences or general fears of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Indian Trail Prop. Ass’n v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)] The evaluation of this preliminary subdivision must therefore be based upon officially adopted county ordinances, plans and policies as well as legally accepted principles. Also, the legislative wisdom of state and county lawmakers must be respected “as is” in deciding the application, since policy decisions are the province of the legislative branch; a quasi-judicial decisionmaker cannot substitute the decisionmaker’s judgment for that of the legislative body “with respect to the wisdom and necessity of a regulation.” [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997); *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)]

DECISION:

The preliminary plat of the *Beckwith* subdivision, as revised and received November 21, 2005, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow and hydrant standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the King County Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 SWDM and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. A surface water adjustment (L06V0003) is approved for this site. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans.

- e. The site is subject to the Level 2 flow control and basic water quality requirements in the 1998 KCSWDM.
7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
- a. The internal access road shall be improved at a minimum to the urban minor access street standard.
 - b. FRONTAGE: The frontage along S 374th Street shall be improved at a minimum to the urban subcollector standard with curb/gutter and sidewalk on the south side. This improvement shall include a crowned roadway section per the KCRS with appropriate drainage provisions on the north side. The improvement shall be designed in general conformance with the conceptual road improvement plan received November 21, 2005; unless otherwise approved by DDES. These improvements shall include an appropriate transition to the existing roadway improvements to the west as shown on the above conceptual plan.
 - c. OFFSITE: S 374th Street from 34th Avenue S to Military Road S shall be improved at a minimum to the urban ½-street standard in general conformance with the conceptual road improvement plan received November 21, 2005, unless otherwise approved by DDES.
 - d. The proposed private access tracts shall comply with Section 2.09 of the KCRS. These tracts shall be owned and maintained by the lot owners served. Notes to this effect shall be showed on the engineering plans and the final plat.
 - e. No direct vehicular access shall be allowed off S 374th Street.
 - f. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.
8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

11. The planter island (if any) within the cul-de-sac shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
12. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
13. Preliminary plat review has identified the following specific sensitive area requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands/Streams

- a. The Class III Stream shall have a 25-foot buffer as measured from the ordinary high water mark (OHWM).
- b. All sensitive areas and their buffers shall be placed in Sensitive Area Tracts for long term protection.
- c. Signage and fencing shall be installed along the Sensitive Area Tract boundaries for long term protection and to clearly mark the extent of the tract.
- d. A 15-foot building setback line (BSBL) is required from the edge of all Sensitive Area Tracts and shall be shown on all affected lots.
- e. Sensitive area tract boundaries shall be clearly marked with bright orange construction and silt fencing prior to construction or site clearing activities. The boundaries shall remain marked until construction is complete.
- f. Impacts to streams/buffer for road improvements allowed per KC 21A.24. However mitigation shall be required. Construction techniques such as retaining walls maybe required at such crossings or improvements to limit impacts. A final mitigation plan shall be required during engineering review.
- g. Hydrology may not be altered either during or after development. A hydrology analysis may be required during engineering review to show how the hydrology will be maintained after the site is developed.
- h. Work within the OHW may require an HPA from the State Department of Fish and Wildlife. It will be the applicant's responsibility to coordinate with WDFW to determine if an HPA is needed.
- i. The engineering plans shall be routed to Critical Areas staff for review of compliance to the above conditions.

- j. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

14. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
- a. A detailed recreation space plan (i.e., area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plan. This plan must not conflict with the Significant Tree Inventory & Mitigation Plan.
- b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
16. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.

- b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
- c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The applicant shall contact Metro Service Planning at 684-1622 to determine if S 374th Street is on a bus route. If S 374th Street is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
- i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

ORDERED November 21, 2006.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED November 21, 2006 to the following parties and interested persons of record:

Chad Beckwith
1201 Browns Pt. Blvd. NE
Tacoma WA 98422

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Bruce Whittaker
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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before December 5, 2006***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before December 12, 2006***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE OCTOBER 10, 2006, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L04P0008.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull, Bruce Whittaker and Kristen Langley, representing the Department and Evan Mann representing the Applicant.

The following Exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit No. 1 | Department of Development and Environmental Services file no. L04P0008 |
| Exhibit No. 2 | Department of Development and Environmental Services Preliminary Report, dated October 10, 2006 |
| Exhibit No. 3 | Application for Land Use Permits received June 9, 2004 |
| Exhibit No. 4 | SEPA Environmental checklist received June 9, 2004 |
| Exhibit No. 5 | SEPA Determination of Non-significance issued September 20, 2006 |
| Exhibit No. 6 | Affidavit of Posting indicating a posting date of August 5, 2004; received by DDES on August 9, 2004 |
| Exhibit No. 7 | Preliminary plat map received November 21, 2005 (Revised) |
| Exhibit No. 8 | Level 1 Downstream Drainage Analysis received June 8, 2005 (Revised) |
| Exhibit No. 9 | Wetland and Drainage Corridor Assessment received June 8, 2005 |
| Exhibit No. 10 | Pedestrian Walkway Findings received December 10, 2004 |
| Exhibit No. 11 | Approved KCSWDM Adjustment L06V0003 |
| Exhibit No. 12 | Letter from William & Frances Manning dated August 23, 2004 |

PTD:gao
L04P0008 RPT